

Applicant: John E. Sherry
Application Serial No.: 09/978,383
Filing Date: October 16, 2001
Docket No.: 760-97 (formerly 498-261)
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D. Remarks/Arguments

Reconsideration of this application as amended is respectfully requested.

Claims 1-16, 18-25, 28-30, 32-35 and 38-39 are in the application. Due to this amendment, claims 36 and 37 have been incorporated into claims 1 and 19 respectively. As a result, claims 36 and 37 have been cancelled.

In the Official Action, the Examiner rejected claims 1-2, 7-12, 14-16, 18-25, 29-34 and 36-37 under 35 U.S.C. §103(a) as being unpatentable over Holman et al. (U.S. Patent No. 6,319,276). This rejection had been previously applied and responded to in the Amendment filed on March 24, 2003. In response to Applicant's arguments filed in support of the March 24, 2003 Amendment, the Examiner stated "Applicant amends the claims and argues a compliant seal ring that is not constrained by remaining portions and singularly circumscribes the tubular member in an annular shape of the prosthesis (see page 6 of response), however the seal ring is connected by channel (22 in figures 2, 6-7 etc.) and thus equates to Holman et al. (see figure 2-5)."

Claims 1 and 19 have both been amended to explicitly include the limitations of cancelled claims 36 and 37, namely that at least one channel is provided in fluid communication with the pocket. Both claims 1 and 19 specifically indicate that the channel is configured to not

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26- constrain the seal ring. In all the embodiments of Holman et al., tubule configurations are provided which impart a right-cylindrical shape to a prosthetic member. The invention of claims 1 and 19 does not provide the same function. Rather, a seal ring is provided for a tubular prosthesis which is not constrained and, as such, is able to comply with irregular vessel cross-sectional shape or partial vessel blockage. It is respectfully submitted that claims 1 and 19, along with respective dependent claims 2, 7-12, 14-16, 18 and 20-25, are patentable over Holman et al.

→ Claim 29 is directed to a method of treating an aneurysm which includes the steps of "implanting endovascularly an endovascular prosthesis" in which a pocket is formed and "conveying an amount of filling agent into said pocket of said implanted endovascular prosthesis". In contrast to the endovascular apparatuses of Holman et al., claim 29 calls for conveying a filling agent into the pocket of the endovascular prosthesis once the prosthesis is implanted. Holman et al. relies on the conveyance of the fluid to implant the prosthesis. It is respectfully submitted that claim 29, along with dependent claims 30 and 32-35, are novel and non-obvious over Holman et al.

Claims 3-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Holman et al. in view of Kwan-Gett (U.S. Patent No. 5,151,105). The Examiner admitted that Holman et al. does not specify the use of an expandable stent and relied on Kwan-Gett to overcome this

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deficiency. The Examiner asserted that it would have been obvious to one having ordinary skill in the art to "utilize the stent with graft as in the Kwan-Gett Patent with the graft of the Holman et al. Patent because it is well known in the art that expandable stents have been utilized for supports [for] graft structures."

Kwan-Gett is directed to a collapsible vessel sleeve implant which utilizes various stent configurations or a balloon for expansion. No pocket for accepting an agent is disclosed in Kwan-Gett and, thus, this reference does not overcome the deficiencies noted above with respect to Holman et al. As such, it is respectfully submitted that claims 3-5, as depending from allowable claim 1, are also patentable for reasons indicated above.

Claims 28 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Holman et al. in view of McDermott et al. (U.S. Patent No. 6,312,462). The Examiner admitted that Holman et al. does not specify the use of a urethane as a curing agent. The Examiner relied on McDermott et al. for disclosing urethanes and concluded that it would have been obvious to use such with the Holman et al. devices.

McDermott et al. is directed to a bifurcated prosthesis for abdominal aortic aneurysm (AAA) repair. The prosthesis is double walled to form a plurality of pockets (See, e.g., Figures 3

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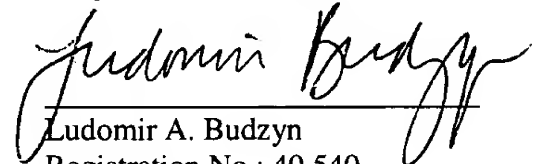
and 4). McDermott et al., however, fails to disclose a pocket which singularly circumscribes a tubular member in an annular shape. In addition, McDermott et al. discloses the use of an inflation fluid to be pumped into the double-wall construction to provide rigidity. The fluid, however is pumped to expand the prosthesis in implanting it, similar to the technique in Holman et al. (See, e.g., column 6, lines 24-27). Accordingly, McDermott et al. does not overcome the deficiencies noted above with respect to Holman et al., and claims 28 and 35, as depending from claims 19 and 29, respectively, are patentable over Holman et al. and McDermott et al., each taken alone or in combination.

Applicant is pleased to note that claims 38 and 39 have been indicated to be allowable and that the Examiner has indicated that claims 6 and 13 include allowable subject matter. It is respectfully submitted that claims 6 and 13, as depending from allowable claim 1, are also in allowable form.

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Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ludomir Budzyn", written over a horizontal line.

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